No. 76553-7

J.M. JOHNSON, J. (dissenting/concurring)—The legislature recognized the authority and wide discretion of county governments to adopt county comprehensive plans according to local growth patterns, resources, and needs. RCW 36.70A.010-902; *Manke Lumber Co. v. Diehl*, 91 Wn. App. 793, 796, 959 P.2d 1173 (1998). This is the necessary starting point when reviewing any Growth Management Act (GMA) case involving review of local legislative planning decisions by one of the Growth Management Hearings Boards (GMA Boards).[1]

The majority adequately recognizes this deference owed to county legislative bodies and the resulting standards of review. However, the majority disregards this principle when it upholds the GMA Board's decision to overturn Lewis County's (County) determination that farm centers and

[1] A separate concern, of constitutional dimension, is not presented today; whether these sui generis unelected boards, appointed by the governor, may overrule county legislators and micromanage land use plans for counties.

farm homes and certain other nonresource related uses are appropriate and allowable on agricultural and forest lands in the county. Therefore, I concur in part and dissent in part.

I. The Growth Management Act and the Role of the GMA Boards

Prior to reviewing these GMA Board decisions, it is necessary to provide a brief overview of the GMA, the creation of the three GMA Boards, the requirements for GMA Board membership, and the GMA Boards' limited role to ensure compliance with GMA, while giving local legislative bodies discretion to address local needs.

In 1991 the Washington State legislature passed the GMA to help preserve Washington's environmental quality and to balance the inevitable growth with the quality of life concerns for the benefit of Washington residents. *See* Laws of 1990, 1st Ex. Sess., ch. 17, codified at ch. 36.70A RCW. The GMA recognizes 13 planning goals, which are not ranked in priority, are not meant to be exclusive, and are permitted to be given varying degrees of emphasis by local legislative bodies. RCW 36.70A.020; WAC 365-195-070(1).

The GMA was to be a "bottom-up" approach, allowing local cities and

counties the authority to make decisions based on their local needs in order to harmonize and balance the 13 statewide planning goals.[2]

GMA was not intended to be a top-down approach with state agencies (or GMA Boards) dictating requirements to local entities. Thus, in accordance with the legislative language of the act, we have held that the GMA does not prescribe a single approach to growth management. RCW 36.70A.3201; *Viking Props. v. Holm*, 155 Wn.2d 112, 125-26, 118 P.3d 322 (2005) ("'the ultimate burden and responsibility for planning, harmonizing the planning goals of [the GMA], and implementing a county's or city's future rests with that community.'" (alteration in original) (quoting RCW 36.70A.3201)).

Thus, the GMA is implemented exclusively by city and county

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[2] RCW 36.70A.020 lists the goals as:

1. Urban growth
2. Reduce sprawl
3. Transportation
4. Housing
5. Economic development
6. Property rights
7. Permits
8. Natural resource industries
9. Open space and recreation
10. Environment
11. Citizen participation and coordination
12. Public facilities and services
13. Historic preservation.

governments and is to be construed with the flexibility to allow local governments to accommodate local needs. *Viking Props.*, 155 Wn.2d at 125-26.

Rather than have GMA disputes proceed directly to superior court, the legislature created three regional GMA Boards to resolve land disputes under the GMA—Western Washington Growth Management Board, Eastern Washington Growth Management Board, and Central Puget Sound Growth Management Board. RCW 36.70A.250. In this case we are dealing with the Western Washington Growth Management Board (Board).

The role of GMA Boards is quasi-judicial and each may interpret for counties and cities the requirements of the GMA to ensure compliance with the GMA's 13 goals. GMA Boards are the first level to resolve conflicting interpretations in order to resolve land disputes quickly and efficiently. GMA Boards are empowered to "hear and determine" allegations that a city, county, or state agency has not complied with the goals and requirements of the GMA and related provisions of the Shoreline Management Act of 1971[3] and the State Environmental Policy Act.[4] RCW 36.70A.280.

[3]Ch. 90.58 RCW.

[4] Ch. 43.21C RCW.

GMA Boards review petitions for review regarding (1) designation of resource lands and critical areas, (2) regulations to conserve and protect critical areas, (3) designate urban growth boundaries, and (4) comprehensive plans, development regulations, and shoreline master plans. Each board may also review the 20-year growth management plans, determine issues of standing, and has the task of making adjustments to growth management planning projects while considering state-wide implications. RCW 36.70A.280.

However, the role of GMA Boards is very limited. The legislature requires each GMA Board "to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of" the GMA. RCW 36.70A.3201. While we give weight to each GMA Board's decisions, deference is required to county planning actions if consistent with the goals and requirements of the GMA. *State v. Bradshaw*, 152 Wn.2d 528, 535, 98 P.3d 1190 (2004), *cert. denied*, 544 U.S. 922, 125 S. Ct. 1662, 161 L. Ed. 2d 480 (2005). Moreover, if a GMA Board fails to give deference to a county planning decision that complies with the GMA, the GMA Board's ruling is not entitled to deference from this court. *Quadrant Corp. v. State*

Growth Mgmt. Hearings Bd., 154 Wn.2d 224, 238, 110 P.3d 1132 (2005).

Some GMA Boards have recognized their very limited authority: that they are not allowed to reach constitutional or equitable issues nor are they empowered to resolve disputes related to impact fees (RCW 82.02.020). *See e.g.*, *Alberg v. King County*, No. 95-3-0041, Cent. Puget Sound Growth Mgmt. Hr'gs Bd. Final Dec. & Order 1109 (Wash. Sept. 13, 1995) (GMA Board can't reach constitutional or equitable issues); *Master Builders Assoc. of Pierce County v. City of Bonney Lake*, No 05-3-0045, Cent. Puget Sound Growth Mgmt. Hr'gs Bd. Final Order (Wash. Jan. 12, 2006) (GMA Board does not have jurisdiction to decide issues related to impact fees imposed under chapter 82.02 RCW.).

While "substantial weight" is afforded to a GMA Board's interpretation of the GMA,[5] they are not judicial or legislative officers. The board members are not elected, but are appointed by the sitting governor for six-year terms (without legislative confirmation). In order to be eligible to participate on a GMA Board, the GMA simply requires of members (1) that at least one attorney and one former local elected official serve on each

[5] *King County v. Cent. Puget Sound Growth Mgmt Hearings Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000).

board, (2) that each board member reside within the region for which the GMA Board has jurisdiction and is qualified by "experience or training in matters pertaining to land use planning," and (3) that no more than two members may reside in the same county nor be from the same political party. RCW 36.70A.260.

In summary, in order to effectuate the true legislative intent of the GMA, local legislative bodies must be free to address local needs and concerns. Each GMA Board's limited quasi-judicial role is to ensure that the proper legislative bodies under the GMA are making the decisions mandated.

II. Agricultural Land and Farm Centers and Farm Homes

The majority properly ascertains the definition of agricultural land from the plain language of the GMA and our prior case law. *See* majority at 8-10 (citing *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 959 P.2d 1091 (1998)). However, the majority and I differ as to the appropriate remedy. The majority would remand the issue to the Board and instruct them to apply the definition. Majority at 12. This will further protract and delay while not allowing the appropriate local government to govern.[6]

[6] Notably, Lewis County has apparently been under constant review of the Board since

I also would remand to the Board (as remand is procedurally necessary) but would instruct the Board to remand to Lewis County to allow the county and its legislative body to correct the designations of land given this new definition. Lewis County must be allowed to alter its plans, if it so desires.

The majority summarily affirms the Board's finding of noncompliance pertaining to farm homes and farm centers. *See* majority at 16. Specifically, the Board found that the provisions allowing farm centers and farm homes failed to comply with the GMA requirements for designation of agricultural resource lands. Clerk's Papers (CP) at 31. I disagree. The farm centers and farm homes that Lewis County allowed are compatible with agricultural lands under the requirements of the GMA.

Lewis County allowed specific farm homes and farm centers to be excluded from the designation of long-term agricultural lands (and thus allowed in those areas):

> Long-term commercially significant designations do not include (a) the "farm home" (a house *currently* on designated lands as the date of designation and a contiguous 5 acres, to be segregated by boundary line adjustment for separate financing

2000 as the Board found Lewis County noncompliant in 2000, 2001, and 2002. Pursuant to RCW 36.70A.130(4)(b) the Board is to review Lewis County's comprehensive plan every seven years. Thus, by the time this opinion issues, Lewis County will be on the cusp of yet another review and they have not fully completed this review.

> purposes; and (2) "farm centers," being those lands *existing at the time of designation*, marked by impervious (gravel or paved) surfaces, including buildings and sheds and storage areas) not to exceed 5 acres, which shall be available for rural commercial and industrial uses under guidelines established as a conditional use. (Non-farm development on the farm center shall not be effective until the County completes the terms of the special use permit.)

Lewis County Ordinance 1179E, CP at 418 (emphasis added). These farm homes and farm centers were areas that had preexisting nonagricultural uses. *Id.* In adopting the above ordinance, Lewis County reasoned that "[t]he family home on the farm is not farmed and is often used for numerous activities that provide economic return to the farm family other than farm agriculture." CP at 255. Regarding farm centers, such as roadside stands for sale of farm products, Lewis County reasoned that "[f]arms in Lewis County have areas developed by paved or gravel level areas, barns, sheds, storage facilities, equipment and machine storage and maintenance areas . . . [s]uch areas support the farm activity, but are not cropped, tilled, or generally used for soil-based agriculture, nor are they likely to in the future." CP at 255. Moreover, the farm centers were to be "centered around the existing barn and shed facilities." CP at 255.

The purpose of farm homes and farm centers was to ensure the long-

term survival of agricultural land by allowing farmers to supplement their income. "[M]ost farms are not economically self sufficient . . . 'on farm non farm income' and the ability of the farm to provide non farm economic opportunities are both essential to the survival of long-term agriculture in Lewis County." CP at 254-55; 853. This income is a substantial component of financial viability for farms in Lewis County.

Such farm centers were often already developed on lands in which the soil was not used for agriculture. A farm house and contiguous land was limited to five acres. Lewis County's Opening Br. at 30. Thus, these farm centers and farm homes have a minimal effect on agricultural land. Lewis County notes that

> The designation of the farm home and the farm center from long-term commercially significant lands will not have a major impact on the conservation and protection of long-term commercially significant agricultural lands because
>
> a. Such lands are commonly not in production; and
>
> b. The land removed from the total designation is estimated to be approximately 2,000 acres, still leaving ample reserve for current agricultural production and future growth."

CP at 255-56. Moreover, home occupations and small commercial activities have previously coexisted with and supported farms and there is no evidence

that such coexistence harmed the long term commercial significance of agricultural land. *See* CP at 857.

The majority states that "[s]erving the farmer's . . . economic needs is not a . . . permissible consideration under the GMA." Majority at 15. This is illogical and would lead to fewer farms. As a legal conclusion, it is wrong; the GMA does not prohibit consideration of farmer's economic needs.

The majority reads RCW 36.70A.030(10) as an exclusive list of what "long-term commercial significance" means. Majority at 11. However, the plain language of the statute shows that the list is not exclusive: "'[l]ong-term commercial significance' *includes* the growing capacity, productivity, and soil composition of the land for long-term commercial production." RCW 36.70A.030(10) (emphasis added). Thus, counties may consider other factors in determining whether land has "long-term commercial significance," including the farmers' economic needs. Moreover, as the planning commission recognized, "most farms are not economically self sufficient, and that 'on farm non farm income' and the ability of the farm to provide non farm economic opportunities are both essential to the survival of long-term agriculture in Lewis County." CP at 254-55. Allowing farm centers actually

furthers the goals of the GMA because farmers will continue to farm because they are able to ensure a profit by supplementing their income through sales, etc.

Farm centers and farm homes are compatible with the requirements of the GMA and may be necessary to perpetuate farms, as the Lewis County elected officials decided after extended and public consideration.

III. Non-Resource Uses

The GMA directs counties to do management and planning but allows county government broad discretion to decide what is best for each county. This discretion is especially important when considering non-resource uses on forest and agricultural land.

RCW 36.70A.060, the development regulations for natural resource lands and critical areas, uses mandatory language and thus imposes a requirement. RCW 36.70A.060(1) provides:

> Each county . . . *shall* adopt development regulations on or before September 1, 1991, to *assure the conservation of agricultural*, *forest*, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere

> with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(Emphasis added).

This court interpreted this statute in the "*Soccer Fields*" case stating: "The County is to conserve agricultural land in order to maintain and enhance the agricultural industry and to discourage incompatible uses." *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 557, 14 P.3d 133 (2000) (emphasis omitted) (hereinafter *Soccer Fields*).

RCW 36.70A.177(1), allowing innovative zoning techniques, uses discretionary language, which indicates a recommendation not a requirement:

> A county or a city *may use* a variety of innovative zoning techniques in areas designated as agricultural lands of long-term commercial significance under RCW 36.70A.170. The innovative zoning techniques *should be* designed to conserve agricultural lands and encourage the agricultural economy. A county or city *should encourage* nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes.

(Emphasis added). The explicit purpose of this statute is to allow counties to apply creative alternatives that *conserve* agricultural lands and *maintain* and *enhance* the agricultural industry. *Soccer Fields*, 142 Wn.2d at 561.

The majority reads these two statutes together to mean that "counties may choose how best to conserve designated lands as long as their methods are 'designed to conserve agricultural lands and encourage the agricultural economy.'" Majority at 17. Thus, Lewis County has discretion in its land designations, but should aim to conserve agricultural lands and encourage the agricultural economy. This is the standard we use when reviewing a board's determination of noncompliance and invalidity regarding non-resource uses.

The majority states:

> [T]he Board essentially interpreted the GMA to prohibit negative impacts on agricultural lands. CP at 676. That is consistent with the RCW 36.70A.060 directive to conserve designated agricultural lands, the RCW 36.70A.020(8) goal of maintaining and enhancing the agricultural industry, and the *Soccer Fields* holding that innovative zoning may not undermine conservation.

Majority at 19-20. However, the Board did not specify any negative impact Lewis County's non-resource uses had on agricultural land. Thus, the Board failed to adequately consider the uses and did not support its findings with evidence. The Board decision did not further the goal of maintaining and enhancing the agricultural industry and may actually undermine farm survival. As discussed above, the many small farms composing "agricultural industry"

often need supplemental income to survive. Finally, the *Soccer Fields* case is easily distinguished. In that case entire parcels of agricultural land were being converted to long-term and nonagricultural uses of recreational fields. Here only a small and specified portion of some agricultural land parcels are being used in each instance (cumulatively little).

The uses that the Board found noncompliant are actually consistent with the GMA when given proper consideration (as Lewis County did here).

A. Lewis County Code (LCC) 17.30.470(2) (c) and (d): Forest Land Incidental Uses

LCC 17.30.470 allows incidental uses on forest land, which may provide supplementary income, "*without detracting from the overall productivity of the forestry activity*." (Emphasis added). The uses must not "adversely affect the overall productivity of the forest nor affect more than five percent of the prime soils[7] . . . on any forest resource lands;" the use must be "secondary to the principal activity of forestry;" and the use must be "sited to avoid prime lands where feasible and otherwise to minimize impact

[7] The omitted language of the quote provides "(15 percent as provided below in LCC 17.30.490(3))". Attach. III (Lewis County's Am. Opening Br.) at 178 (Attach. III). A notation next to the quote provides "error – see strike out at 17.30.490(3)(d)." 17.30.490(3)(d) strikes out the words "15 percent or less". Attach. III at 180. The County states that the 15 percent clause was erroneously left in the subsection and should have been struck out. We assume that the County means what it says and has corrected this error.

on forest lands of long-term commercial significance. LCC 17.30.470(1); Attach. III (Lewis County's Am. Opening Br.) at 178-79 (Attach. III).

The Board declared several subsections of LCC 17.30.470 as noncompliant and invalid: (2)(c), allowing telecommunication facilities as an incidental activity, and (2)(d), allowing the "erection, construction, alteration, and maintenance of gas, electric, water, or communication and public utility facilities." Attach. III at 179; CP at 46. The Board reasoned that the restrictions on the incidental uses did not fulfill the GMA requirement that natural resource lands be conserved and incompatible uses discouraged. CP at 46.

Lewis County had reasoned that these incidental uses are necessary because the county's residential corridors are surrounded by forest lands, any cross county public utility will necessarily cross either forest or agricultural lands. CP at 866. Moreover, most of the prominent hills in the county are located in forest land, thus any desire to run communication lines or towers on tall hills will require that they be located in forest lands. CP at 866.

Considering the protective limits Lewis County placed on the minimally intrusive incidental uses, as well as the necessity of those uses and

their importance to the agricultural economy, the uses meet the GMA's directive to conserve agricultural lands and encourage the agricultural economy. The uses comply with the GMA and are well within Lewis County's discretion under the GMA.

B. LCC 17.30.480: Essential Public Facilities (forest land)

LCC 17.30.480 provides:

> Essential public or regulated facilities, such as roads, bridges, pipelines, utility facilities, schools, shops, prisons, and airports are facilities, which by their nature are commonly located outside of urban areas and may need large areas of accessible land. Such areas are allowed where:
>
> (1) Identified in the comprehensive plan of a public agency or regulated utility.
>
> (2) The potential impact on forestry lands and steps to minimize impacts to commercial forestry are specifically considered in the siting process.

In deciding that this section was both noncompliant and invalid, the Board admitted that:

> There are essential public facilities such as roads, bridges, pipelines and utility lines that must, of necessity, be located in resource lands. Clearly, the County must take into account the need for the construction of such facilities in resource lands. However, the County must also assure that the construction of these essential public facilities in forest resource lands does not interfere with the use of the resource.

CP at 47. Lewis County notes that one-third of the county is in designated

forest lands. CP at 871. Thus, essential public facilities including roads, bridges, pipelines, and utility lines must be located in resource lands.

This section of Lewis County's code is compliant and valid because the County has appropriately balanced the requirement for essential public facilities with conservation of forest land. The evidence supporting this appropriate balance includes the admitted fact that forest land encompasses a large percentage of Lewis County, and the requirements of section 480 that uses must be identified in the comprehensive plan. The impact of each use on the forest land is considered and minimized in the siting process. The legislature required the counties to receive deference in making such decisions.

C. LCC 17.30.490(3) (b) and (g): Maximum Density and Minimum Lot Area (forest land)

LCC 17.30.490(3) provides:

> Subdivision as an Incidental Use. A residential subdivision of land for sale or lease within primary or local forest lands, whether lots are over or under five acres in size, may be approved under the following circumstances.
>
> (a) The total density, including existing dwellings, is not greater than one unit per 80 acres, for forest land of long-term commercial importance, and that one unit per 20 acres for forest lands of local importance.
>
> (b) The units are clustered on lot sizes consistent with Lewis County board of health rules for wells and septic.

(c) Adequate water and provisions for septic are in fact present.

(d) The project affects none of the prime soils on the contiguous holdings at the time of the adoption of this chapter, including all roads and accessory uses to serve the development; however, that prime lands previously converted to non-forestry uses are not considered prime forest lands for purposes of this section.

(e) The plat shall set aside the balance of the parcel in a designated forest tract.

(f) The plat shall contain the covenants in LCC 17.30.540.

(g) Any subdivision shall meet the cluster subdivision requirements of LCC 17.115.030(10)[8]

The Board found subsections (b) and (g) noncompliant and invalid. CP

[8] LCC 17.115.030(10) provides:

Cluster Subdivisions greater than six units.

(a) Special conditions.

(i) Must be on properties 40 acres and larger.

(ii) No more than 24 cluster subdivision units in any 1/2-mile radius, except where separated by a visual geographic barrier.

(iii) The hearing examiner shall examine the existing and proposed development within a one-mile radius of the perimeter of the proposed site to protect rural character and shall:

(A) Determine the nature of existing development and availability of adequate facilities.

(B) Determine the likelihood of probably future cluster development.

(C) Determine the cumulative effect of such existing and probable future development.

(iv) The hearing examiner shall make written findings that the area in which the cluster is located is within the population targets of Table 4.3, p. 4-63 of the Lewis County comprehensive plan.

(v) The hearing examiner shall identify necessary conditions, including caps or specific limitations to assure that urban development defined in RCW 36.70A.030(17) as prohibited outside urban growth areas by RCW 36.70A.110 does not occur, and that the rural character identified in the comprehensive plan and RCW 36.70A.030(16) and RCW 36.70A.070(5)(b) is protected, and to achieve the specific requirements of RCW 36.70A.070(5)(c).

at 48. The Board stated that "[l]imitations on clustering are needed to ensure that residential subdivisions will not interfere with forestry activities." CP at 46. However, the section contains many limitations designed to protect forest activities—no prime soils may be affected, water provisions must be in place, and clustering restrictions contained in LCC 17.115.030(10). These limitations are sufficient to fulfill the GMA requirement of conserving forest land. Thus, the challenged sections are compliant and valid.

D. LCC 17.30.510: Water Supply

> (1) When residential dwellings, other structures, or any other use intended to be supplied with water from off-site sources, an easement and right running with the land shall be recorded from the property owners supplying the water prior to final plat approval, building permit issuance, or regulated use approval.
>
> (2) Due to the potential to interfere or disrupt forest practices on forest lands, new residential or recreational public water supplies shall comply with state standards and shall not be located within 100 feet of classified forest lands without an easement from the adjacent or abutting forest land property owner.

The Board found LLC 17.30.510 to be in violation of the GMA, RCW 36.70A.110 (4), 36.70A.060[9] and 36.70A.040. CP at 49. The Board based its conclusion on chapter 36.70A RCW claiming the provision "runs afoul of

[9] Natural resource lands and critical areas –Development regulations.

the GMA prohibition against providing urban governmental services outside of urban growth areas." CP at 48. The Board stated

> The extension of water systems (whether owned privately or publicly) to natural resource lands for residential purposes clearly violates the GMA by encouraging intense levels of development in resource lands and encouraging nonresource-related uses of those lands.

CP at 48.

The Board's conclusion ignores the GMA's balancing of the 13 planning goals and fails to implement the GMA's clear mandate that cities and counties are to make planning decisions—not boards.

To properly apply chapter 36.70A RCW, we must be guided by legislative intent as expressed in the language of the GMA. *Cannon v. Dep't of Licensing*, 147 Wn.2d 41, 57, 50 P.3d 627 (2002); *Rozner v. City of Bellevue*, 116 Wn.2d 342, 347, 804 P.2d 24 (1991). All of the GMA provisions must be considered in their relation to one another, and if possible, harmonized to ensure proper construction of each provision. *City of Seattle v. Fontanilla*, 128 Wn.2d 492, 498, 909 P.2d 1294 (1996).

The Board's decision implies that extension of water systems to natural resource lands for residential purposes may never occur. This is not consistent with the GMA. There are 13 planning goals that must be balanced

and harmonized with others. This balancing and harmonizing is within the discretion of the cities and counties. *See Manke Lumber*, 113 Wn. App. at 626-27. The protection of natural resources and critical areas is just one of the 13 planning goals under the GMA. The other planning goals require, inter alia, cities and counties to balance economic development needs, private property needs, and environmental needs. The blanket ban on extension of water systems to natural resource lands renders RCW 36.70A.110(4), 36.70A.040, and 36.70A.060 inconsistent with the GMA's harmonizing approach and inconsistent with the discretion given to local cities and counties to balance those goals.

E. LCC 17.30.620(3) and (4): Primary Uses

LCC 17.30.620(3) and (4) allowed several "primary uses" on agricultural land including:

> (3) One-single family dwelling unit or mobile home per lot, parcel, or tract, and the following farm housing:
> (a) Farm employee housing; or
> (b) Farm housing for immediate family members.
> (4) Active mineral resource activities, including mining, processing, storage, and sales.

LCC 17.30.620(3), (4). The Board held these uses noncompliant and invalid. CP at 38-39.

Regarding section (3), housing, the Board inconsistently acknowledged that "[f]arm worker housing and housing for immediate family members . . . may well be a resource-related use." CP at 38. The record here supports the necessity to encourage young members of families to stay on the farm. CP at 877. Further, farm worker housing is a resource related use that maintains and enhances the agricultural industry. Section (3) is an allowable use under the GMA.

Regarding section (4), mining, the Board held that the provision does not comply with the GMA to the extent mining activities are allowed without restriction in agricultural resource lands. CP at 37. The Board noted that mining activities are nonagricultural uses with great potential to impact agricultural activities and the lands themselves. CP at 38.

Lewis County argued that mining (presumably sand and gravel) is allowed to provide on-farm non-farm income. CP at 877.

The Board erroneously held that allowing any such mining in agricultural areas would not comply with the GMA. It is likely that mining (as further defined) could be allowed in an agricultural area with the appropriate restrictions. However, such use may be better included in the

incidental uses section discussed directly below.

F. LCC 17.30.640(2) (b) (c) and (e)

LCC 17.30.640, Incidental uses, provides for "[u]ses which may provide supplementary income *without detracting from the overall productivity of the farming activity*." (Emphasis added). The Board found subsections (2)(b), (c), and (e) noncompliant. CP at 42. LCC 17.30.640(2) (Ord. 1170B, 2000) provides:

> (2) Uses Allowed as Incidental Activities.
> . . . .
> (b) Telecommunication facilities;
> (c) Public and semipublic buildings, structures, and uses including, but not limited to, fire stations, utility substations, pump stations, wells, and transmission lines;
> . . . .
> (e) Home based business subject to the same size requirements, development conditions, and procedures and processes as home based businesses authorized under LCC 17.42.40[.]

Subsection (1) qualifies these allowed uses by stating that such uses "will not adversely affect the overall productivity of the farm nor affect any of the prime soils on any farm." LCC 17.30.640(1)(a). The code itself states that uses may not detract from the overall farming activity and that such uses will not affect any of the prime soils. Lewis County has properly qualified the non-farm incidental uses in its code. Thus, the County requirements for a

non-farm use assure the conservation of agricultural lands as required by RCW 36.70A.060.

G. LCC 17.30.650: Essential Public Facilities (agricultural land)

This section is similar to the requirements in LCC 17.30.480, discussed above. LCC 17.30.650 provides:

> Essential public or regulated facilities, such as roads, bridges, pipelines, utility facilities, schools, shops, prisons, and airports, are facilities, which by their nature are commonly located outside of urban areas and may need large areas of accessible land. Such areas are allowed where:
>
> (1) Identified in the comprehensive plan of a public agency or regulated utility.
>
> (2) The potential impact on farmed lands and steps to minimize impacts to commercial agriculture are specifically considered in the siting process.

The Board concluded that this section was noncompliant and invalid. CP at 43. Regarding roads, bridges, pipelines, and utility lines, the Board found noncompliance because there were no restrictions ensuring minimal interference with agricultural activity. CP at 43. However, the Board overlooked the restrictions which are written into the statute; the public facilities must be identified in the comprehensive plan and the impact on the lands must be considered and minimized when determining the location of such facilities.

Regarding schools, shops, prisons, and airports, the Board found noncompliance because the uses interfere with agricultural uses and do not need to be placed on agricultural land. CP at 43. It is appropriate that Lewis County consider the need for such facilities on agricultural land. An example of such a need would be allowing some schools to be sited in agricultural areas to shorten student commutes.

H. LCC 17.30.660(1):Maximum Density and Minimum Lot Area (agricultural land)

This section is similar to the requirements in LCC 17.30.490(3), discussed above. LCC 17.30.660(1) provides:

> The minimum lot area for any new subdivision, short subdivision, large lot subdivision or exempt segregation of property shall be as follows, except for parcels to be used for uses and activities provided under LCC 17.30.610 through 17.30.650:
>
> (1) Development Standards - Division of Land for Sale or Lease. The minimum lot area for subdivision of commercial farmland shall be 20 acres; provided, however, that a residential subdivision of land for sale or lease, whether lots are over or under five acres in size, may be approved under the following circumstances:
>
> (a) The total density of residential development on the entire contiguous ownership, including existing dwellings, is not more than one unit per 20 acres.
>
> (b) The units are clustered on lot sizes consistent with Lewis County board of health rules for wells and septic.
>
> (c) Adequate water and provisions [for] septic capacity are in fact present.
>
> (d) The project affects none of the prime soils on

> the contiguous holdings at the time of the adoption of the ordinance codified in this chapter, including all roads and accessory uses to serve the development; provided, however, that prime lands previously converted to non-crop related agricultural uses, including residential, farm and shop buildings and associated yards, parking and staging areas, drives and roads, are not considered prime farm lands for purposes of this section.
>
> (e) The plat shall set aside the balance of the prime farm lands in a designated agricultural tract.
>
> (f) The plat shall contain the covenants and protections in LCC 17.30.680.
>
> (g) Any subdivision shall meet the cluster subdivision requirements of LCC 17.115.030(10).

The Board found subsections (b) and (g) noncompliant and invalid. CP at 56. The Board expressed concern that clustering would not conserve agricultural lands and encourage the agricultural economy. CP at 44. However, the section contains many limitations designed to protect agricultural activities—no prime soils may be affected, water provisions must be in place, and clustering restrictions are contained in LCC 17.115.030(10). These limitations are sufficient to fulfill the GMA's requirement of conserving agricultural land. Thus, the challenged sections are compliant and valid.

IV. Conclusion

I concur with the majority's conclusion regarding the definition of

agricultural land. However, the majority incorrectly proceeds to allow the Board—instead of the County—to decide that farm centers and farm homes are improper on agricultural land and that certain non-resource related uses are improper on agricultural and forest lands. By remanding to the Board instead of through the Board to the County to apply the decision, the local control mandated by the legislature in the GMA is further frustrated. The proceedings and resulting delay imposes costs easily avoided by my recognition of the legislature's intent. Therefore, I concur in part and dissent in part.

AUTHOR:

Justice James M. Johnson

WE CONCUR:

Justice Tom Chambers

Justice Richard B. Sanders